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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R No.184 of 1998
Date of decision: 4.12.2006

Commissioner of Income Tax, Ludhiana

...Appellant

Versus

M/S Giri Agencies 158-C, Kitchlu Nagar, Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.S.K.Garg Narwana, Advocate for the Revenue.

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 22.4.1997 passed in I.T.A.No.662/CHD/93, in respect of the assessment year 1991-92.

> "Whether on the facts and in the circumstance of the case, the Tribunal was right in law in confirming the order passed by the first appellate authorities directing the AO to allow registration to the firm?

The Assessing Officer refused registration of the firm on the ground that assessee had not maintained accounts book and bank account during the relevant assessment year and therefore, it could not be verified as to whether the profit has been divided as per the partnership deed.

On appeal, the DCIT(A) reversed the said view and held that non maintenance of the accounts book could not be a ground for refusing of registration and treating the firm as URF. Reliance was placed on decision of the Kerala High Court in **V.K.Kurien & K.P.George Vs. Commissioner of Income-Tax,(1967) 63 ITR 675.** It was further held that the partners had been duly assessed for their share from the registered

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firm and thereafter registration could not be refused as held by the Gujarat High Court in **Laxmichand Hirjibhai Vs. Commissioner of Income Tax, (1981)128 ITR 747. R**elying on a circular of the Central Board of Direct Taxes, similar view has been expressed by Patna High Court in **C.I.T. Vs. Imperial Textiles (1993) 201 ITR 555.**

We have heard learned counsel for the revenue and perused the record.

Finding concurrently recorded by the DCIT(A) and the Tribunal has not been shown to be in any manner erroneous nor applicability of the judgments relied upon has been disputed. We are in agreement with the view taken by the Tribunal that the registration could not be refused merely on the ground that firm had not kept the books of account when the parties had already been assessed individually to the extent of their shares in the income of the firm. In **Bhaichand Amoluk & Co. Vs. C.I.T., (1962) XLIV ITR 511 (SC)**, it was held by the Hon'ble Supreme Court that a finding as to the existence or otherwise of a firm is ordinarily a question of fact unless the same is held to be perverse or based on misdirection in law.

In view of the above, question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of , accordingly.

(Adarsh Kumar Goel)
Judge

December 04 ,2006 **(Rajesh Bindal)**
Pka **Judge**